

117858

21202

Boyle  
PL**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-206653

DATE: March 19, 1982

MATTER OF: Kemp Industries, Inc.

**DIGEST:**

Protest based on provisions of a request for proposals--restricting competition to one source--is dismissed as untimely under GAO Bid Protest Procedures because the protest was filed after the closing date for receipt of initial proposals. Further, GAO concludes that the protest does not present a significant issue warranting an exception to the timeliness requirements.

Kemp Industries, Inc. (Kemp), protests the proposed award of a contract to Cadillac Gage Co. (Cadillac) under request for proposals (RFP) No. DAAE07-82-R-A040 issued by the Army for 102 turret and gun control modification kits. We conclude that Kemp's protest is untimely and does not present a significant issue warranting an exception to our timeliness requirements.

Kemp received the RFP prior to February 11, 1982, the closing date for receipt of initial proposals. The RFP stated that only Cadillac was eligible for award. The Army advised Kemp that the procurement was for Greece and, pursuant to Greece's request and applicable Defense Acquisition Regulation (DAR) provisions (32 C.F.R. §§ 6-1307 and 3-210.2(xviii) (1979)), competition was restricted to one source, Cadillac.

On March 8, 1982, Kemp protested to our Office on the ground that the restriction on competition is unjustified because Kemp is fully capable of performing the required work. Kemp contends that the DAR provisions are improperly discriminatory and the provisions are inconsistent with procurement policies applicable to direct Federal procurements.

Protests concerning the propriety of proposed awards under the Department of Defense foreign military sales program are subject to the same timeliness rules as any other protest. International Logistics Group, Ltd., B-202819, May 19, 1981, 81-1 CPD 386, affirmed, B-202819.2, June 30, 1981, 81-1 CPD 544. To be timely, our Bid Protest Procedures require protests based on provisions of the RFP to be filed prior to the closing date for receipt of initial proposals, 4 C.F.R. § 21.2(b)(1) (1981). Since Kemp did not protest here until after the RFP's closing date for receipt of initial proposals, Kemp's protest is untimely.

Kemp suggests that since the protest concerns the validity of DAR provisions, the protest presents a significant issue within the meaning of 4 C.F.R. § 21.2(c) (1981).

The exception to our timeliness rules in section 20.2(c) of our Procedures, which is exercised sparingly so that our timeliness standards do not become meaningless, contemplates a protest which involves a procurement principle of widespread interest or which affects a broad class of procurements. See Lee Roofing Co., B-201154, March 16, 1981, 81-1 CPD 197; C.A. Parshall, Inc., B-200334, February 19, 1981, 81-1 CPD 112. In our view, the issue of whether a particular purchase should have been made by competitive procurement rather than through a sole-source award is not of sufficient interest to the procurement community to invoke that exception. Further, we have held that a protest does not involve a significant issue when the matter has been considered in a prior decision. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225, and the decision cited therein. Our decision in B-176571, October 20, 1972, considered objections to a procuring agency's sole-source award in connection with a foreign military sale. There, we found no basis to object to the sole-source award made pursuant to the DAR provisions involved in the instant matter. Thus, the issue is not significant within the meaning of our Bid Protest Procedures.

Protest dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel